

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 7 of 1984

For Approval and Signature:

Hon'ble MR.JUSTICE S.M.SONI

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
  2. To be referred to the Reporter or not?
  3. Whether Their Lordships wish to see the fair copy of the judgement?
  4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
  5. Whether it is to be circulated to the Civil Judge?

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NIVRITI C KAYATHEKAR

Versus

STATE OF GUJARAT

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Appearance:

MR SS BELSARE for Petitioner  
Respondent served.

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CORAM : MR.JUSTICE S.M.SONI

Date of decision: 19/04/96

ORAL JUDGEMENT

Question involved in this petition is whether the petitioner's cadre of Spinning & Weaving Instructor is at par with the cadre of Weaving Instructor and entitled to scale revised by Sarela and Desai Pay Commissions.

The facts leading to the present petition are as under. Petitioner has been working as Spinning and Weaving Instructors since 1955 in the Mental Hospital,

Baroda in the Department of Health and Family Planning. One of the duties of the petitioner is to teach and/or train mentally derailed persons of all degree from full madness to lesser degree of madness. Petitioner had passed vernacular final examination in 1945 and had sufficient knowledge of Gujarati at the time of recruitment. He had completed two years textile course in spinning and weaving school, Sholapur. He had also completed one year's apprenticeship in Sholapur spinning and weaving mills, Sholapur. Petitioner was appointed in the scale of Rs.135-250.

Respondent no.1- State appointed pay commissions, first Pay Commission, known as Sarela Pay Commission and Second Pay Commission, known as Desai Pay Commission, for revision of pay of the employees of the State Government. Neither respondent no.1 nor respondent no.2 had made any representation on behalf of the petitioner before those Pay Commissions. It can, therefore, be said that revision of pay of the cadre of the petitioner was not considered by any of the two Commissions. As the cadre of the petitioner was not considered before either of the Pay Commission, petitioner made representations at least to put him at par with other similarly situated and identical cadres. According to the petitioner, the cadre of the petitioner is at par with one those of Instructor, Craft Teacher, Weaving Assistant in the grade of Rs.200-340 and Weaving Assistant in the grade of Rs.175-275. Despite the same, as the case of the petitioner was not considered, the present petition is filed.

Learned Advocate Mr.Balsare for the petitioner contended that petitioner was appointed in the scale of Rs.135-250, which is equivalent to the scale of Instructor, Craft Teacher and Weaving Assistant at Serial nos.127, 124, 20 and 25 at pages 58, 68, 123 and 124 of Gujarat Civil Services (Revision of Pay) Rules, 1975. Mr.Balsare further contended that it was the duty of the respondent no.1 -State to make representations before both Pay Commissions and the failure to do so has affected adversely the pay scale of the petitioner and thereby the State has committed breach of Articles 14 and 16 of the Constitution of India. Mr.Balsare further contended that the principle of 'equal pay for equal work' of the employees similarly situated has not been followed in the case of the petitioner and he prays to put the petitioner in the pay scale of Weaving Inspector in any case.

The question, therefore, required to be

considered is whether the petitioner is similarly situated with that of the cadre of Instructor and the nature of work is also the same or not. The request of the petitioner is turned down on the ground that the nature of work and the qualification required of the Weaving Instructor in Jail and other departments are different than the one which are possessed by the petitioner and required by the petitioner to discharge his duty in the mental hospital. To show that the qualifications of the petitioner are identical with that required for Weaving Instructor, the petitioner had produced Annexure C, an advertisement for the post of Weaving Instructor. There, the scale prescribed is Rs.350-600. The qualifications required are S.S.C. or equivalent; diploma of an institution imparting full time education or a certificate in textile (weaving or manufacturing) for a course of two years of handloom technology and three years weaving or handloom weaving experience; or must have passed Std.VII in Gujarati; one year full time training course in handloom and cotton industry of recognised institution and five years experience of weaving and handloom weaving. The question is whether the petitioner has such qualifications or not. The petitioner has stated in the petition that he has passed vernacular final examination in 1945 and has completed textile course in spinning and weaving school, Sholapur (now ITI). Petitioner has completed one years apprenticeship in Sholapur Spinning and Weaving Mills. In view of this fact, if one compares with these two qualifications, one which is possessed by the petitioner and other required for the post of Weaving Instructor, they are practically the same and identical ones. I say that working in the mental hospital since number of years should be considered to be a better qualification than the persons working in the institutions where persons with normal mental conditions are instructed. It is not the case of the respondent that the petitioner is holding any qualification less than one required for Instructor or Weaving Assistant, be it in the scale of Rs.200-340 or Rs.175-275. Petitioner has been working since 1955 and by passage of time also, he has gathered sufficient experience of the post, to which he was initially appointed and had necessary qualifications for the same.

When cases of all the cadres were presented before the Pay Commissions, it was equally the duty of the State Government to present the case of the petitioner. It may be that the Pay Commissions may agree with the proposal to revise the pay, but it was mandatory on the part of the Government to present the case of the petitioner and if the case of the petitioner was not

presented before the Pay Commissions, in any case, the Government ought to have bracketed the petitioner with some of the cadres to give him the advantage of revision of pay. Here, in the instant case, it is clear that the case of the petitioner is in any case comparable with the case of Instructor, where the pay scale is of Rs.135-250 identical with that of the petitioner. In any case, therefore, the petitioner should have been bracketed with the instructor at Serial no.127 on page 58 of Gujarat Civil Services (Revision of Pay) Rules, 1975 and should have been given a revised pay in the scale of Rs.330-530.

Though the rule is duly served on the respondents, they have not chosen to remain present before the court. Neither of the learned A.G.P., who appears before the court, is instructed to appear in the matter. It is not known as to on what basis the petitioner is given the scale of Rs.260-570, instead of Rs.330-530, treating him at par with Instructor.

In view of the above facts, the refusal to revise the pay of the petitioner on the ground referred in Annex.D dated 8.12.81 is not warranted by facts and the petitioner is entitled to relief prayed for. Petitioner is, therefore, entitled to be treated at par with Instructor at Sl.No.127 on page 58 of the Gujarat Civil Services (Revision of Pay) Rules, 1975 and put in the scale of Rs.330-530 from the date on which the said Rules are made effective. Respondents are also required to be directed to grant further stage if revised by subsequent Pay Commissions, treating the petitioner in the cadre of Instructor.

In the result, the petition is allowed. Respondents are directed to put the petitioner at par with Instructor at Serial no.127 on page 58 of the Gujarat Civil Services (Revision of Pay) Rules, 1975 and revise his pay accordingly. Rule made absolute. In the facts and circumstances of the case, respondents shall pay the costs of the petitioner.

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